

M Crim JI 15.5 Factors in Considering Operating While Intoxicated [OWI] and Operating While Visibly Impaired [OWVI]

As you consider the possible verdicts, you should think about the following:

[Choose appropriate paragraphs:]

- (1) What was the mental and physical condition of the defendant at the time that [he / she] operated the motor vehicle? Were the defendant's reflexes, ability to see, way of walking and talking, manner of driving, and judgment normal? If there was evidence that any of these things seemed abnormal, was this caused by [drinking alcohol / using or consuming a controlled substance / using or consuming an intoxicating substance / using or consuming a combination of (alcohol / a controlled substance / an intoxicating substance)¹]?
- (2) You may also consider bodily alcohol content in reaching your verdict. In that regard, [was / were] the test(s) technically accurate? Was the equipment properly assembled and maintained and in good working order when the test(s) [was / were] given?
- (3) Were the test results reliable? Was the test given correctly? Was the person who gave it properly trained? Did the circumstances under which the test was given affect the accuracy of the results?
- (4) One way to determine whether a person is intoxicated is to measure how much alcohol is in [his / her] [blood / breath / urine]. There was evidence in this trial that a test was given to the defendant. The purpose of this test is to measure the amount of alcohol in a person's [blood / breath / urine].

[Choose (5)(a) and/or (5)(b):]²

- (5) If you find
 - (a) that there were 0.17 grams or more of alcohol [per 100 milliliters of blood / per 210 liters of breath / per 67 milliliters of urine] when [he / she] operated the vehicle, you may find the defendant operated a motor vehicle while intoxicated with a high bodily alcohol content, whether or not it affected [his / her] ability to operate a motor vehicle.
 - (b) that there were 0.08 grams or more of alcohol [per 100 milliliters of the defendant's blood / per 210 liters of the defendant's breath / per 67 milliliters of the defendant's urine] when [he / she] operated the vehicle, you may find the defendant operated a motor vehicle with an unlawful bodily alcohol content, whether or not this alcohol content affected [his / her] ability to operate a motor vehicle.
- (6) You may infer that the defendant's bodily alcohol content at the time of the test was the same as [his / her] bodily alcohol content at the time [he / she] operated the motor vehicle.³
- (7) In considering the evidence and arriving at your verdict, you may give the test whatever weight you believe that it deserves. The results of a test are just one factor you may consider, along with all other evidence about the condition of the defendant at the time [he / she] operated the motor vehicle.

Use Notes

1. Where a combination of alcohol and other controlled or intoxicating substances is shown, select the appropriate combination of alcohol/substances based on the evidence presented.

2. Read both (5)(a) and (5)(b) if operating with a high bodily alcohol content is charged, and operating while intoxicated is being considered by the trier of fact as a lesser offense. Otherwise, read (5)(a) or (5)(b) according to the charge and the evidence.

3. If the evidence warrants, the following can be added to this paragraph (6): [However, you have heard evidence that the defendant consumed alcohol after driving but before the [blood / breath / urine] test was administered. You may consider this evidence in determining whether to infer that the defendant's bodily alcohol content at the time of the test was the same as [his / her] bodily alcohol content at the time that [he / she] operated the motor vehicle.]

History

M Crim JI 15.5 (previously CJI2d 15.5) was amended October, 1993, and June, 1995, to reflect the changes in 1994 PA 449 and 450; amended September, 2003, to reflect the statutory changes in 2003 PA 61, effective September 30, 2003; and amended September, 2010, to reflect the statutory changes in 2008 PA 463, effective October 31, 2010. The Use Note to this instruction was added by the committee in May, 2008. Amended December 2014 to reflect changes under 2012 PA 543; amended December 2015 to reflect changes under 2008 PA 463.

Reference Guide

Statutes

MCL 257.625.

Case law

People v Wager, 460 Mich 118; 594 NW2d 487 (1999); *People v Campbell*; 236 Mich App 490, 601 NW2d 114 (1999); *People v Smith*, 182 Mich App 436; 453 NW2d 257 (1990); *People v Nicolaidis*, 148 Mich App 100; 383 NW2d 620 (1985); *People v Carter*, 78 Mich App 394; 259 NW2d 883 (1977), *modified*, 402 Mich 851; 261 NW2d 182 (1978); *People v Krulikowski*, 60 Mich App 28; 230 NW2d 290 (1975); *People v Kozar*, 54 Mich App 503; 221 NW2d 170 (1974).